

Model HIPAA Business Associate Placeholder Provision

[§ No.] HIPAA Compliance

Contractor may receive or create certain health or medical information (“Protected Health Information” or “PHI,” as defined below) in connection with the performance of this Contract. This PHI is subject to protection under state and federal law, including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations, as amended, promulgated thereunder by the U.S. Department of Health and Human Services (the “Regulations”). Unless otherwise defined herein, all capitalized terms shall have the meaning given to them under HIPAA and its implementing Regulations, as may be amended from time-to-time.

The State may be a “Covered Entity” under the Regulations, and Contractor's receipt or creation of PHI from or on behalf of the State in connection with this Contract means that Contractor may be a “Business Associate” of the State under the Regulations. Contractor represents and warrants that it has in place policies and procedures that will adequately safeguard any PHI it receives or creates, and Contractor specifically agrees, on behalf of its subcontractors and agents, to safeguard and protect the confidentiality of PHI consistent with applicable law, including currently effective provisions of HIPAA and the Regulations.

The parties acknowledge that state and federal laws relating to electronic data security and privacy for PHI are rapidly evolving and that modification of this Contract may be required to provide for procedures to insure compliance with such developments. Contractor specifically agrees that such compliance is within the scope of this contract and is a cost of doing Contractor's business. The parties specifically agree that they will take such action as is necessary to implement the requirements of HIPAA, the Regulations, and other applicable laws relating to the security or confidentiality of PHI by any compliance date that may be established therein. The parties understand and agree that the State must receive satisfactory written assurance from Contractor that it will adequately safeguard all PHI that it receives from the State or that it creates or receives on behalf of the State. Upon the State's written request, Contractor agrees promptly to enter into negotiations with the State concerning the terms of an addendum to this contract embodying written assurances consistent with the requirements of HIPAA and the Regulations.

Notwithstanding any other provision of this Contract, the State may, in its sole discretion, terminate this Contract upon thirty (30) days' notice in the event: (a) Contractor does not promptly enter into negotiations to modify this Contract when requested by the State; or (b) Contractor does not execute and deliver to the State an addendum to this Contract providing assurances and other covenants regarding the safeguarding of PHI that the State, in its sole judgement, deems reasonably necessary or appropriate to meet the requirements and standards of HIPAA and the Regulations (“HIPAA Addendum”).

In the event the parties cannot agree on the terms of the required HIPAA Addendum within a reasonable period, but in any event not less than ninety (90) days prior to the applicable compliance dates, the State reserves the right, in lieu of terminating the Contract, to unilaterally

change this Contract to include such reasonable HIPAA Addendum terms and conditions as are acceptable to the State. Contractor agrees that such unilateral change will not invalidate this Contract, and that Contractor shall not be entitled to any additional compensation from the State in order to comply with applicable provisions of HIPAA, the Regulations, or any HIPAA Addendum.

Notwithstanding any other provision of this Contract, the State may immediately terminate this Contract in the event: (a) Contractor, or any of its subcontractors or agents, uses or discloses PHI in a manner that is not authorized by the State or by applicable law; (b) Contractor breaches any of the provisions of this section; or (c) Contractor or any of its subcontractors or agents engages in any other act or omission that is contrary to the obligations of a Business Associate or Covered Entity under any currently effective applicable provision of HIPAA or the Regulations, or that otherwise prevents either party from meeting the requirements of HIPAA, the HIPAA Regulations or other applicable law concerning the security or confidentiality of PHI.

Upon termination of this Contract for any reason, Contractor shall return or destroy all PHI received from the State (or created or received by Contractor on behalf of the State) that Contractor still maintains in any form and shall retain no copies of such PHI. If return or destruction is not feasible, Contractor shall notify the State, continue to extend the protections of this agreement and applicable law to such information and limit further use of such PHI to those purposes that make the return or destruction of PHI infeasible.

For purposes of this section, "Protected Health Information" means any information, whether oral or recorded in any form or medium: (a) that relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (b) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

This section shall be interpreted in a manner consistent with HIPAA, the Regulations and other state or federal laws applicable to PHI. Nothing in this section is intended to create any third party rights or third party beneficiary status. In the event of any conflict or inconsistency between the terms and conditions of this section on HIPAA Compliance and any other provision of this Contract (with the exception of the Colorado Special Provisions), the terms and conditions of this section shall control.

Model HIPAA Business Associate Placeholder Provision for Interagency Agreements

[¶ No.] HIPAA Compliance

The parties may receive or create from or on behalf of each other certain health or medical information (“Protected Health Information” or “PHI,” as defined below) in connection with the performance of this interagency agreement. Use or disclosure of this PHI is subject to protection under state and federal law, including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“Regulations”). Although the parties may not presently know their precise legal status and relationship under HIPAA, the parties nevertheless specifically agree that they will take such action as is necessary, including amending this interagency agreement, to implement in a timely manner the requirements of HIPAA, the Regulations, and other applicable laws relating to the security or confidentiality of PHI.

For purposes of this section, “Protected Health Information” means any information, whether oral or recorded in any form or medium: (a) that relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (b) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

The terms and conditions of this interagency agreement, and all rights of action relating to its enforcement, shall be strictly reserved to the parties. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the parties to this agreement that any third person or entity receiving services or benefits in connection with this agreement shall be deemed an incidental beneficiary only.